

REMARKS

I. Status of Claims.

Claims 2-15, 17-20, and 34-39 are presently pending. Claims 2-15 and 37 are cancelled herewith without prejudice to pursue them in a continuing application. Claims 17-20 34-36, 38 and 39 are remaining within this application.

II. Amendment to the claims.

Claims 34-36 has been amended. No new matter is believed to be introduced by these amendments.

III. Rejection of claims 34-36 under 35 USC 112, second paragraph.

The Examiner further rejected claims 34-36 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Specifically, the Examiner objected to claims 34-36 as being directed to a calibration medium, while parent claim 39 is directed to an optical instrument. Applicant has amended claims 34-36 to comply with the provisions of 35 USC 112, second paragraph and respectfully requests that this rejection be withdrawn.

IV. Rejection of Claims 34-36 and 39 under Double Patenting.

The Examiner rejected claims 34-36 and 39 under the judicially created doctrine of double patenting over claims 1-5 of U.S. Patent No. 6,423,249 B1 ('249 patent). Applicant has attached to this response (Appendix A) a terminal disclaimer that was filed during the prosecution of the '249 patent. During the prosecution of the '249 patent a terminal disclaimer was requested based upon the instant application. The '249 patent's

term was disclaimed as to the instant application. Applicant respectfully suggests that the instant application's term controls the term of the '249 patent as evidenced by the attached terminal disclaimer. Applicant respectfully requests that this rejection be withdrawn.

V. Claims 17-20 and 38 Allowable.

The Examiner indicated that claims 17-20 and 38 are allowable over the art of record. Applicant thanks the Examiner for his diligence in the examination of the instant application and the allowance of these claims.

CONCLUSION

Accordingly, in light of the above remarks and amendments, it is believed that all remaining claims are now in condition for allowance, and therefore reconsideration and allowance are earnestly solicited. If the Examiner feels that a telephone conference would expedite prosecution of this case, or resolve any remaining issues, the Examiner is invited to contact the undersigned at (617) 856-8369.

Respectfully submitted,



Brian L. Michaelis, Reg. No. 34,221
Attorney for Applicant
Customer No. 21710
Brown Rudnick Berlack Israels LLP
One Financial Center, Floor 18, Box IP
Boston, MA 02111
Tel.: 617-856-8369
Fax: 617-856-8201

June 30, 2003